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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,563	08/05/2003	Walter Zanoletti	71064	6014

7590 07/26/2004

McGLEW AND TUTTLE, P.C.  
SCARBOROUGH STATION  
SCARBOROUGH, NY 10510-0827

EXAMINER
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JOHNSON, STEPHEN

ART UNIT	PAPER NUMBER
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3641

DATE MAILED: 07/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/634,563

**Applicant(s)**

ZANOLETTI, WALTER

**Examiner**

Stephen M. Johnson

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 May 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 5, 6, 10, 11, 16 and 17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 7-9, 12-15 and 18-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-20 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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1. Applicant's election without traverse of the species A invention (fig. 1) in the reply filed on 5/18/2004 is acknowledged.

Claims 5-6, 10-11, and 16-17 are withdrawn from consideration as being directed to non-elected species. Claims 1-4, 7-9, 12-15, and 18-20 read on the elected invention and an action on these claims follows.

2. Claims 1-4, 7-9, 12-15, and 18-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 5, how is the phrase "a base" intended to relate to the previously claimed "base" (see claim 1, line 4)? In claim 1, line 5; in claim 9, line 6; and in claim 12, line 5; what direction is intended by the phrase "a direction of firing"? In claim 1, line 6, what the term "them" is intended to reference is indefinite. Please clarify. In claims 2 and 13, what length is intended by the phrase "a guage of the cartridge" and how is this equal to the diameter of base 16? In claim 9, lines 6-7, what length is intended by the phrase "the guage of the cartridge" and how is this equal to the diameter of the external wall of the wad? In claim 3, the phrase "the diameter" lacks an antecedent. In claim 3, how is the diameter of the cylindrical lateral wall at least one gauge less than the guage of the base? What amount or distance is intended by the phrase "at least one guage"? Claim 9, lines 7-8 and claim 14 are indefinite for like reasons. In claims 4 and 15, what item is intended by the phrase "a whole or segmented annular element"? In claim 9, line 4, how is the phrase "steel small shot" intended to relate to the previously claimed (steel small shot)? In claim 12, line 5, how is the phrase "a base" intended to relate to the previously claimed (base)? In claim 12, line 6, what item is intended to correspond to the

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claimed "a spacer means"? Note that the cylindrical outer wall is not the spacer means but rather determines the limits or borders of the space. In claim 19, line 1, the phrase "said spacer" lacks an antecedent. In claim 20, line 1, how is the phrase "steel shoot" intended to relate to the previously claimed steel shot?

3. The term "small" in claims 1, 9, and 12 is a relative term which renders the claim indefinite. The term "small shot" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. The terminology small shot makes the claim indefinite as to what size of shot is or is not intended to be inclusive in such terminology. What is small relative to one size of shot is large relative to another size of shot.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless —

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-4, 12-15, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Rickey.

Rickey discloses a cartridge and wad comprising:

- |   |                   |
|---|-------------------|
| a) a case with end percussion cap;          | 10, 12, 14, 16    |
| b) a firing charge in said case;            | 18                |
| c) a wad for accommodating small shot;      | 28                |
| d) a base turned toward the firing charge ; | 26, 24            |
| e) a cylindrical lateral wall;              | see figs. 2 and 3 |

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- f) an annular space; between 34 and 10
- g) an annular element; and 38
- h) shot. 22

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 8-9 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rickey in view of Kosteck.

Rickey applies as previously recited. However, undisclosed is shot for a shotshell that is steel shot. Kosteck teaches shot for a shotshell that is steel shot 24. Applicant is substituting one material type of shot for another in an analogous art setting as explicitly encouraged by the secondary reference (see Kosteck, col. 3, line 18). It would have been obvious to a person of ordinary skill in this art at the time of the invention to apply the teachings of Kosteck to the Rickey shotshell and have a shotshell with a different material type of shot.

8. Claims 1-4, 7, 12-15, and 18-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Critcher.

Critcher discloses a cartridge and was comprising:

- a) a case with end percussion cap; 5, 2, 6
- b) a firing charge in said case; 18
- c) a wad for accommodating small shot; 14, 21
- d) a base turned toward the firing charge ; 14

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- e) a cylindrical lateral wall; 21
- f) an annular space; see fig. 1
- g) an annular element including a conical surface converging  
downwardly; and 14 (see fig. 1)
- h) shot. 23

9. Claims 1-4, 7, 12-15, and 18-19 are rejected under 35 U.S.C. 102(b) as being anticipated by SU 1607552 A1.

SU 1607552 A1 discloses a cartridge and wad comprising:

- a) a case with end percussion cap; fig. 2
- b) a firing charge in said case; fig. 2
- c) a wad for accommodating small shot; fig. 1
- d) a base turned toward the firing charge ; fig. 1
- e) a cylindrical lateral wall; 5
- f) an annular space; between 5 and 6
- g) an annular element including a conical surface converging  
downwardly; and between 5 and 6
- h) shot. 3

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Fackler and de Casanovas et al. disclose other state of the art shotshells.

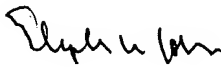
11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen M. Johnson whose telephone number is 703-306-4158.

The examiner can normally be reached on Tuesday through Friday. If attempts to reach the

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examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 703-306-4198. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-4177.

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9326. The fax phone number for after final communications is (703) 872-9327.



STEPHEN M. JOHNSON  
PRIMARY EXAMINER

Stephen M. Johnson  
Primary Examiner  
Art Unit 3641

SMJ